

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BAHSID MCLEAN,

Plaintiff,

vs.

**9:21-CV-1144
(TJM/ATB)**

C.O. A. COTTRELL, et al.,

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this action to Magistrate Judge Andrew T. Baxter for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff brought this case pursuant to 42 U.S.C. § 1983, alleging that Defendants, Correction Officers with the New York State Department of Corrections and Community Supervision (“DOCCS”), violated his Eighth Amendment right to be free of excessive force during two incidents that occurred at the Auburn Correctional Facility on August 12, 2021.

Judge Baxter’s Report-Recommendation, dkt. # 37, issued on April 17, 2023, recommends that the Court deny Defendants’ motion for summary judgment. Judge Baxter finds that many questions of fact exist regarding the events in question, and that determination of those questions by a jury is necessary. Plaintiff and the Defendants offer very different versions of the conflict between the Plaintiff and the Correction Officers, as

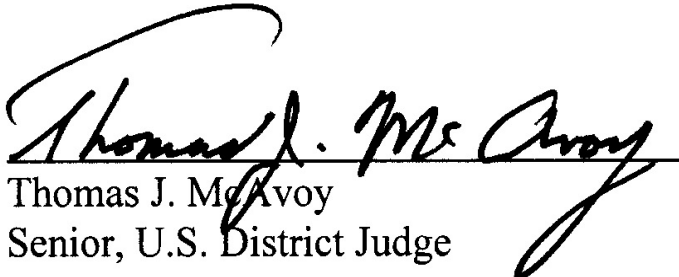
well as the motivation of the officers for their interactions with Plaintiff on the date in question. Judge Baxter also finds that questions of fact exist which prevent finding that qualified immunity applies at this point in the litigation.

No party objected to the Report-Recommendation. The time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

Accordingly:

The Report-Recommendation of Judge Baxter, dkt. # 37, is hereby **ACCEPTED** and **ADOPTED**. Defendants' motion for summary judgment, dkt. # 34, is hereby **DENIED**.

IT IS SO ORDERED.


Thomas J. McAvoy
Senior, U.S. District Judge

Dated: June 2, 2023